



## Council Report


776 N.E. 125 Street, North Miami, Florida 33161

To: The Honorable Mayor and City Council

From: Leonard Burgess, Chief of Police

Date: August 25, 2015

RE: Proposed Resolution Approving the execution of an agreement between the North Miami Police Department and the Office of the State Attorney for the Eleventh Judicial Circuit of Florida.



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### **RECOMMENDATION**

That the City Council adopt a resolution authorizing the City of North Miami to enter into an agreement between the North Miami Police Department and the Office of the State Attorney for the Eleventh Judicial Circuit of Florida.

### **BACKGROUND**

As a result of the legislation passed in 2004, the said agreement will enable the prosecution of municipal ordinance violations as authorized in Sections 27.02 and 27.34, Florida Statutes. In addition, counties/municipalities will be required to pay for the defense of indigents charged with violating an ordinance and also be required to pay a filing fee for each ordinance violation prosecuted.

### **Attachments**

Proposed Resolution  
Agreement

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, APPROVING THE EXECUTION OF AN AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND THE MIAMI-DADE STATE ATTORNEY'S OFFICE TO PROSECUTE CRIMINAL MUNICIPAL ORDINANCE VIOLATIONS OF THE CITY OF NORTH MIAMI CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.**

**WHEREAS**, section 27.34 of the Florida Statutes, authorizes the State Attorney to prosecute municipal ordinance violations punishable by incarceration but not ancillary to state prosecution and to enter into contracts with municipalities to recover the costs of attorney services; and

**WHEREAS**, the City of North Miami ("City") finds that in order to maintain and improve the health, safety and welfare of this community, it is necessary to adequately enforce and prosecute violations of the City Code of Ordinances; and

**WHEREAS**, the Mayor and City Council believe that the Agreement will benefit the residents of the City and should be entered into with the Miami-Dade State Attorney's Office.

**NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:**

**Section 1.**      **Approval of Agreement.** The Mayor and City Council of the City of North Miami, Florida, hereby approve the Agreement for prosecution of municipal ordinance violations attached hereto as "Exhibit 1."

**Section 2.**      **Authority of City Manager.** The City Manager is hereby authorized to execute the Agreement with the Miami-Dade State Attorney's Office.

**Section 3.**      **Effective Date.** This Resolution shall become effective immediately upon adoption.

**PASSED AND ADOPTED** by a \_\_\_\_\_ vote of the Mayor and City Council of the City of North Miami, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
DR. SMITH JOSEPH  
MAYOR

ATTEST:

\_\_\_\_\_  
MICHAEL A. ETIENNE, ESQ.  
CITY CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
ROLAND C. GALDOS, ESQ.  
INTERIM CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**Vote:**

Mayor Smith Joseph, D.O., Pharm. D.  
Vice Mayor Alix Desulme  
Councilman Scott Galvin  
Councilman Carol Keys, Esq.  
Councilman Philippe Bien-Aime

_____	(Yes)	_____	(No)
_____	(Yes)	_____	(No)
_____	(Yes)	_____	(No)
_____	(Yes)	_____	(No)
_____	(Yes)	_____	(No)

**AGREEMENT BETWEEN THE CITY OF NORTH  
MIAMI AND THE STATE OF FLORIDA, OFFICE OF  
THE STATE ATTORNEY FOR THE ELEVENTH  
JUDICIAL CIRCUIT OF FLORIDA TO REIMBURSE  
THE STATE FOR THE COST OF STATE ATTORNEY  
PROSECUTION OF CERTAIN CRIMINAL  
VIOLATIONS OF THE NORTH MIAMI CODE**

This agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of North Miami, a political subdivision of the State of Florida (hereinafter referred to as the “City”) and the Office of the State Attorney for the Eleventh Judicial Circuit of Florida (hereinafter referred to as “State Attorney”).

WHEREAS, the City finds that in order to maintain and improve the health, safety, and welfare of this community, it is necessary to adequately enforce and prosecute violations of the City’s Municipal Code; and

WHEREAS, Section 27.02, Florida Statutes, authorizes the State Attorney to prosecute municipal ordinance violations punishable by incarceration if ancillary to state prosecution or, if not ancillary to state prosecution, when the State Attorney contracts with the City for reimbursement.

NOW, THEREFORE, the parties hereto agree as follows:



**ARTICLE I**  
**Services**

The State Attorney agrees to prosecute municipal ordinance violations as authorized in Sections 27.02, and 27.34, Florida Statutes. The City agrees to remit, subject to the terms outlined in Article III of this agreement, to the State Attorney the required funds to reimburse for costs associated with the prosecution of violations of the Municipal Code for the period of August 26, 2015, through September 30, 2020. The State Attorney shall provide such clerical and professional personnel as may be required for the performance of any of the functions of the State Attorney as set forth in this agreement. This agreement does not commit the City to pay for the prosecution of Municipal Code violations ancillary to state prosecution or for the prosecution of municipal ordinance violations not punishable by incarceration. This agreement specifically does not authorize the State to handle appeals of municipal ordinances on constitutional grounds, which shall remain the responsibility of the municipality that passed the ordinance.

**ARTICLE II**  
**Terms**

This agreement shall expire on September 30, 2020, unless terminated earlier pursuant to Article VII of this agreement. Under no circumstances shall the City be liable to continue or extend this agreement beyond this date. This agreement may only be amended in writing, through a document executed by duly authorized representatives of the signatories to this agreement.

**ARTICLE III**  
**Payment Schedule**

The City agrees to reimburse the State Attorney on an hourly basis for services rendered at a rate of Fifty dollars (\$50) per hour. On a quarterly basis, the State Attorney shall provide the City with an invoice including, but not limited to, the hours of services rendered, number of cases prosecuted as set forth in this agreement, and the total amount due for payment for the previous month. The City shall remit each payment within ten (10) days after receiving said invoice from the State Attorney.

#### **ARTICLE IV** **Responsibilities**

The City does not delegate any of its responsibilities or powers to the State Attorney other than those enumerated in this agreement. The State Attorney does not delegate any of its responsibilities or powers to the City other than those enumerated in this agreement.

#### **ARTICLE V** **Reporting**

All required reports shall be submitted to the \_\_\_\_\_.

## **ARTICLE VI**

### **Indemnification**

It is expressly understood and intended that the State Attorney is only a recipient of the reimbursements paid by the City and is not an agent of the City. The respective parties agree, subject to the provisions of Chapter 768.28 (17), Florida Statutes, that they will hold each other harmless from any claims arising from this agreement.

## **ARTICLE VII**

### **Termination**

Either party may terminate this agreement at any time with or without cause by furnishing written notice to the other party with no less than ninety (90) days notice.

## **ARTICLE VIII**

### **Service Charges**

This agreement is contingent upon all City funding provided, and any interest earned thereon, not being subject to any State service charges or administrative assessments.

## **ARTICLE IX**

### **Non-Discrimination**

The State Attorney agrees to abide and be governed by Title II of the Americans with Disabilities Act of 1990, Title VI and VII, Civil Rights Act of 1964 (42 USC 200d, e) and Title VIII of the Civil Rights Act of 1968, as amended, which provides in part that there will not be discrimination of race, color, sex, religious background, ancestry, or national origin in performance of this contract, in regard to persons served, or in regard to

employees or applicants for employment and it is expressly understood that upon receipt of evidence of discrimination, the City shall have the right to terminate said agreement.

IN WITNESS THEREOF, the parties have caused this agreement to be executed by their respective and duly authorized officers the day and year first above written.

CITY OF NORTH MIAMI

By: \_\_\_\_\_  
Aleem A Ghany, City Manager

ATTEST:

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

By: \_\_\_\_\_  
Michael A. Etienne  
City Clerk

By: \_\_\_\_\_  
Roland C. Galdos  
Interim City Attorney

State Attorney's Office  
Eleventh Judicial Circuit

By: \_\_\_\_\_

By: \_\_\_\_\_  
Don L. Horn  
Chief Assistant State Attorney  
for Administration





## STATE ATTORNEY

ELEVENTH JUDICIAL CIRCUIT OF FLORIDA  
E. R. GRAHAM BUILDING  
1350 N.W. 12TH AVENUE  
MIAMI, FLORIDA 33136-2111

KATHERINE FERNANDEZ RUNDLE  
STATE ATTORNEY

TELEPHONE (305) 547-0100

November 16, 2005

Mr. Clarence Patterson  
City Manager  
City of North Miami  
776 NE 125 Street, 4th Flr.  
North Miami, FL 33161

Dear Mr. Patterson:

Legislation passed in 2004 to implement Revision 7 to Article V of the Florida Constitution provides that the State Attorney may prosecute municipal ordinances only if (1) the ordinance violation is ancillary to a felony prosecution (s. 27.02(1), Florida Statutes), or (2) the county/municipality has entered into a contract with the State Attorney for these prosecutions (s. 27.34(1), Florida Statutes). Additionally, counties/municipalities are required to pay for the defense of indigents charged with a violation of an ordinance (s. 27.54(2), Florida Statutes) and are required to pay a \$10 filing fee to the Clerk of the Court for each ordinance violation prosecuted (s. 34.045(1)(a), Florida Statutes).

Attached please find a proposed agreement for the prosecution of ordinance violations for the period of October 1, 2005 – September 30, 2006. Please sign and return to this office as soon as possible. If you desire to make changes to the contract and want an electronic version of this document, please contact me at [tedmannelli@miamisao.com](mailto:tedmannelli@miamisao.com) and I will forward you a copy. This contract is for the prosecution of ordinances only; the State Attorney's office has no statutory authority to handle appeals relating to the constitutionality of ordinances.

The State Attorney's office will need either a signed agreement to prosecute ordinances or a response from you stating that you do not want us to prosecute any ordinance violations. If you opt for the latter, we would further need to be advised as to what procedures you intend to follow if an arrest is charged as an ordinance violation, i.e., you need to advise us who will represent you or whether you want us to nolle pros any arrests which are charged against ordinances. In this regard, please understand that a signed agreement merely gives us the authority to prosecute the arrests. If an arrest is erroneously charged as an ordinance violation and you dispute your bill, we will review and make corresponding adjustments to our records so that you will not be obligated to pay.

An ordinance with a corresponding state statute may be filed as either a state statute violation or municipal ordinance violation. Whether a state statute or ordinance is charged is dependent on what the officer indicates on the arrest form. Please be aware that the enabling code incorporates a state statute by reference and **converts the prosecution to an ordinance violation. If an officer lists the**

**county/municipality enabling code on the arrest form, it will be filed as an ordinance violation**, thus triggering the charges provided for in the statute. Some entities have directed their officers to file everything with a corresponding state statute as a state statute violation. If that is the policy decision of the county/municipality, police officers should be directed to put the state statute citation on the arrest form **while omitting the enabling code**. If an arrest is charged to a state statute, the county/municipality will avoid any of the charges provided for in statute; however, any fines that are levied will accrue to the state and not the entity whose officer made the arrest. Whether this is cost beneficial is a decision that each entity will have to make for itself.

We will be using data from the Clerk of the Court's database as our billing document (see Attachment 2 for an example). These data represent ordinance violations for which the county/municipality is being charged a filing fee pursuant to s. 27.34(1), Florida Statutes. Please note that this is a monthly report, which will be provided to you on a quarterly basis.

You will be billed at the statutorily prescribed rate of \$50 per hour. Our estimate is that, on average, it takes approximately 20 minutes per case; therefore, you will be charged at the rate of \$16.67 per case. Section 27.34(1)(a), Florida Statutes, allows the Florida Legislature to specify a different hourly rate in the General Appropriations Act. If the Legislature specifies a different rate for the 2006-2007 state fiscal year, the contract will be amended accordingly. Please note that this is the charge for ordinance prosecution only. Pursuant to state law, there are separate charges for indigent defense from the Public Defender and filing fees from the Clerk of the Court.

Since this process is heavily dependent on input from the arresting officer and the booking correctional officer, it is possible that some errors might be made on the invoice. You are requested to review the invoice when you receive it. Please note items that you dispute, deduct their cost, and remit the remainder. The items under dispute will be reviewed by our staff and re-invoiced in the following quarter if necessary.

If you have any questions about the procedures discussed above, or the contract, or if I can provide any other information, please do not hesitate to contact me at 305-547-0562 or at [tedmannelli@miamisao.com](mailto:tedmannelli@miamisao.com).

Sincerely,

KATHERINE FERNANDEZ RUNDLE  
State Attorney



By: Theodore F. Mannelli  
Executive Director

TFM/cj  
Enclosures